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THE COMPANIES BILL.

A PLEA FOR AMENDING CERTAIN CLAUSES

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Certain major changes recommended by the Joint Committee were considered in a previous Note. There are also certain other matters in respect of which the Bill as revised by the Committee will require further consideration when Parliament takes up the Bill for discussion at the next Session. They are noted hereunder :

Private Companies.—Private Companies not being subsidiaries of public companies are in the same position as that occupied by 'exempt private companies' in the United Kingdom, and their special position is recognised by the Joint Committee throughout the Bill except in respect of the matters covered by the following sections : 219, 325, 342, 343 and 344. There is no reason why a private company which is more or less a family concern or private concern of a few persons should file copies of its Balance Sheet with the Registrar. No doubt, following the recommendations of the Cohen Committee the U.K. Act requires all companies including 'exempt private companies' to file such copies. But the Cohen Committee give no reason for their recommendation, and the Indian Company Law Committee, simply adopted without discussion the Cohen Committee Report and recommended the filing with the Registrar by all companies of copies of their balance-sheets.

Section 219.—It is not easy to comprehend why a third party should know more about the financial position of a private company than about a partnership firm with which he has no concern. I would suggest that unless the Central Government by notification in the Official Gazette declares that in the public interest the provisions of section 219 shall apply to a private company or class of private companies, private companies which are not subsidiaries of public companies should be exempt from the obligation under the section. So at the end of section 219 a sub-section has to be added as follows :

"(4) This section shall not apply to a private company which is not the subsidiary of a public company, unless the Central Government by notification in the Official Gazette declares that the provisions of this section shall apply to private companies of any class or description."

Sections 325, 342, 343 *and* 344.—There is no reason for requiring Central Government approval for appointment of managing agents, transfer of managing

agency or succession to the office of managing agent in the case of a private company which is not a subsidiary of a public company. The sections incorporate in the body of the Bill the provisions of sections 87-BB and 87-CC of the existing Act (introduced by the Amending Act LII of 1951) and the same provisions adopted in Schedule XI of the Bill as originally presented to Parliament. Both in the existing Act and the said Schedule XI, private companies other than subsidiaries of public companies were expressly exempted from the requirement of Central Government approval in respect of these matters. It has to be borne in mind that in view of the number of members of a private company being limited and transfers of shares restricted, various difficulties may arise in practice in cases where Central Government approval happens to be withheld. As regards the need for Central Government approval in the case of private companies, one may well ask the question and exclaim *qui bono !*. It is my considered view that private companies other than subsidiaries of public companies should be exempt from the condition of Government approval in respect of the above matters.

Limitation of voting rights : *Section* 86 (1).—In view of the concentration of shares in the hands of managing agents and their circle of friends including the Directors, a provision limiting the maximum number of votes that any single shareholder may exercise will be conducive to the interest of the company as a whole. It is within the knowledge of the present writer that in the case of some Insurance Companies, Textile Mills and Plantation Companies in South India the shares are so accumulated and concentrated in the hands of the managing agents, their nominees and associates (in some cases to an extent of so much as 80 per cent. or more of the total number of shares) that no resolution however beneficial to the company if it is not favoured by the managing agents, can succeed at any general meeting. Any good-intentioned shareholder is simply cowed down.

There is no reason why the provision in section 12 (*iv*) of the Banking Companies Act which enacts that the voting rights of any one shareholder are not to exceed five per cent. of the total voting rights of all the shareholders, should not be extended to all companies or at least public companies and their subsidiaries.

Sections 175 (1) (*b*) *and* 182.—Section 175 (1) (*b*) by necessary implication gives the right to a shareholder of a public company having more than one vote, to appoint more than one proxy to represent him or as many proxies as he may desire and they all may vote differently on his behalf; and section 182 gives the shareholder the right to use his votes differently, some for and some against a resolution in respect of which a poll is taken. The conception of plural voting rights is not in conformity either with common sense or philosophy, inasmuch as it confers divisive rights destructive of one's individuality and right of judgment and it is not justifiable on any rational grounds. Both section 175 (1) (*b*) and section 182 may have to be deleted.

There are two Proxy Forms given in Schedule IX and both of them are exactly the same in wording. It is not made clear anywhere in the Bill why two forms are given.

Auditor's Report : *Section* 226 (3).—Shareholders have no access to the accounts and no means of knowing the state of affairs of the company in which they have invested their moneys, except to the extent disclosed in the balance-sheet, Profit and Loss Account, and the Directors' Report and Auditors' Report. In the case

of almost all companies the Auditors' Report simply repeats the wording of the section as to what is required to be stated, thus: "We have examined the Balance-Sheet and Profit and Loss Account for the year ended 31st December, 1954, with the Books and Accounts of the Company. We have obtained all the information and explanations we have required. In our opinion the said Balance-Sheet and Profit and Loss Account are drawn up in conformity with the law and the Balance-Sheet exhibits a true and correct view of the state of the Company's affairs according to the best of our information and the explanations given to us and as shown by the books of the Company. In our opinion books of accounts have been kept by the Company as required by section 139 of the Indian Companies Act."

If any transactions of the company are not carried on in accordance with the provisions of the Act, if there is any apparent illegality in any respect, if any act is *prima facie* unauthorised, is it or is it not the duty of the Auditor to report the same to the shareholders? If the auditor of a company is merely to make a report complying barely with the form required without drawing attention to apparent illegality or irregularity, what is the use of an auditor's report which simply says that the books of account are kept as required by law and the Balance-Sheet and Profit and Loss Account are in conformity with the books and that in his opinion they give a "true and correct view" or "true and fair view" of the company's affairs. It is not enough that the accounts should be "kept" as required by law but the items disclosed therein must be 'regular' in the sense that they have been lawfully incurred and within the powers of the Directors or the other managing authority. If an illegal or unauthorised expenditure is disclosed in the accounts, it must be the duty of the auditor to scrutinise its regularity and report it to the shareholders.

At least what the Banking Companies Act (section 30 (3), requires an auditor to state in his Report should be required of him in the case of all companies. In the Banking Companies Act he has to state in his Report:

"(*a*) Whether or not the information and explanations required by him have been found to be satisfactory;

(*b*) whether or not the transactions of the company which have come to his notice have been within the powers of the company;

(*c*) whether or not the return received from branch offices of the company have been found adequate for the purposes of his audit;

(*d*) whether the profit and loss account shows a true balance of profit and loss for the period covered by such account."

The Report of the auditor in its existing form which merely complies with the letter of the law is useless for good and makes auditing an empty farce.

In connection with the Auditors' Report, one other matter also demands consideration. Section 230 only requires that notices of all general meetings should be given to the auditor and says that he will be entitled to attend and be heard at any such meeting. In the case of the annual general meeting where the Balance-Sheet and Profit and Loss Account are laid and the Auditors' Report is read, it should not only be the right but the duty of the auditor to attend and explain his report and answer relevant questions touching it. This will bring him in direct contact with the shareholders and make him feel that he has a duty not to the management but to the shareholders. I commend this suggestion for consideration by Parliament.

Miscellaneous Provisions : *Section* 168 (9).—This clause provides that the company may recoup itself of the expenses paid to requisitionists, by recovering the same from the Directors in default. The language of the clause in its present form is cumbrous and the procedure suggested needlessly circumflex. For the second part of the Clause the following may be substituted :

"And any sums so repaid shall be recovered as debt due to the company from such of the Directors as were in default."

Section 203.—Sub-section (2) as amended by the Joint Committee is inadvertently defective in grammar and phraseology and conveys no sense as regards sub-clauses (*ii*), (*iii*) and (*iv*). Sub-section (2) of section 293 of the original Bill which this has replaced, being clear and full has to be substituted, or the entire words beginning with " unless the firm or body corporate.........." and ending with the words " of such body corporate " may have to be deleted.

Section 263.—In this section the words " shall not be capable of being appointed " will mean that a candidate is not to stand as a candidate for election as Director unless before he so stands, he has filed with the Registrar a consent in writing to act as Director. The filing of a consent by each and every candidate irrespective of whether he is subsequently elected or not, is needlessly wearisome to the candidates without serving any purpose. And further in the case of mofussil companies when the Registrar's office is situate at a great distance away, considerable inconvenience will be experienced by candidates who happen to decide to stand for election just a few days before the annual general meeting. As the consent is required to be *filed* with the Registrar *before* the election, if for any reason the Registrar delays the filing or refuses to file for any alleged defect or returns it for rectification and re-presentation or takes time to decide (as he usually does in many cases) whether to file or not, the candidate will lose his chance of standing for the election. The filing of papers with the Registrar is sometimes delayed for months. That apart the provision can be effectively so used as to prevent new candidates coming in, especially when such candidates are not relished by the Directorate or the management. The language of the section is such as to enable the Chairman if he so chooses to insist upon proof of the filing by a new candidate of his consent with the Registrar —which proof cannot possibly be given—if the Registrar delays the filing or communicating the filing to the candidate in time.

I therefore suggest that the section be amended as follows :

" A person other than a retiring Director who is appointed Director of a company shall not be capable of acting as Director unless he has by himself or by his agent authorised in writing, signed and filed with the Registrar a consent in writing to act as such Director."

Section 292 (1) (*c*).—This clause in the process of amendment by the Joint Committee has been rendered meaningless by the inadvertent omission of some words by the Committee. The expression " sale proceeds resulting from the acquisition " has no meaning as it now stands. The original clause (section 272 (*c*)) was meaningful and it is not clear why an unintelligible alteration has been made.

Section 313.—Sub-section (3) of this section is defective and is not in parity with or justificative of sub-section (1). It covers only the case of the Directors holding office or place of profit and does not cover the case of his partner or the private company of which he is a director or a member. The sub-section has to be amen-

ded by substituting the word "person" for "director" where it first occurs and deleting the words "as such director" occurring after the word "entitled." Otherwise the obtaining of salary, etc., by a partner of the director will not come within the meaning of sub-section (1). As it is, the sub-section (3) will apply only if the director concerned, *himself obtains qua* director anything over and above his salary, etc.

Section 345.—In the Explanation to the section there is an inadvertent omission of what constitutes a change in the constitution of a firm. The section has been adopted from section 87-BB of Schedule XI of the original Bill and in the process of the change the omission has inadvertently occurred. Explanation 1 of section 87-BB in Schedule XI of the original Bill has to be included, if the section is to be made applicable to firms.

Section 367.—The scope of the section does not apparently cover rights arising by reason of the cessation or termination of the managing agent's rights as clause (*a*) refers only to rights *before* the cessation or termination; and clause (*b*) confines itself to the rights and liabilities of the managing agent in any other capacity. If, for instance, the company removes the managing agent for alleged "gross negligence" under section 337, has or has not the managing agent a right of action under this section? The right arises because of the termination. It does not arise *before* the termination, nor in any other capacity than that of managing agent. The section has to be made clear by adding the words "or by reason of" after the word "before" in clause (*a*).

Section 368.—This section is somewhat confusing. If the managing agent is given a particular power under the Memorandum of Articles, can he be prevented from exercising such power by the Board of Directors in virtue of the powers of supervision, control and direction given to them under this section? If the Directors intervene, the provision of the memorandum or Articles is nullified; if they cannot intervene, the power of direction and control given to the Board by this section is nullified.

Section 627 (1).—The sub-section as it stands would seem to confer jurisdiction on any Court—a civil Court hearing a case relating to breach of trust, etc., or a magistrate's Court trying any proceeding. As this is not the intention of the sub-section it is necessary that in order to avoid any doubt or ambiguity the words "hearing the case" occurring after the words "the Court" should be deleted so that the words "the Court" will only mean the Court having jurisdiction under this Act within the meaning of the definition given in section 2 (11).

Sections 636 *and* 648.—Possibly through inadvertence the Joint Committee as well as the framers of the original Bill have omitted to consider the effect of these two sections. These have been adopted from the English Act section 459 (2) and (14) without appreciating their effect. Section 636 lays down that. "Nothing in this Act shall affect..............any regulation, appointment.............. document..........aggreement made......resolution passed........under or in pursuance of any Companies Law; but any such regulation, appointment...... etc. etc., shall, if in force at the commencement of this Act, continue to be in force and so far as it could have been made..............passed..........executed ....under or in pursuance of this Act." The phraseology of this section is such that the latter part of it cannot control the earlier part, so that the intention is to save from the Act all regulations, agreements, resolutions, etc., existing on

the date of the Act. This means that the specific provisions, regulations, etc. governing existing companies, such for instance as those relating to managing agents, will stand unaffected by reason of the positive saving phraseology : "Nothing in the Act shall affect............."

Having regard to the detailed provisions in the body of the Act itself as to the period of continuance, termination, etc., of the various matters affected by the enactment, the present section is wholly unnecessary and will only serve as a subterfuge.

Section 648 again says that : "Nothing in this Act shall affect............ Table A of the first Schedule to the Indian Companies Act 1913............so far as the same applies to any existing company at the commencement of this Act." This means and can only mean that if any existing company had adopted and was governed by all or any of the regulations of Table A of the First Schedule to the Companies Act, 1913, to the extent to which they applied, no provision of the new Act inconsistent with those regulations shall affect the company concerned. Is this kind of consequence contemplated by this new enactment? If so, the object of the enactment will be defeated. These two sections coming at the fag end of the Bill have apparently escaped scrutiny at the hands of the Joint Committee.

THE VALIDITY OR OTHERWISE OF THE INCREASE IN SMALL CAUSE JURISDICTION BEYOND RS. 1000—*A note.*

By

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By Madras Act XVI of 1951, the Small Cause jurisdiction has been increased to Rs. 2000 by amending section 28, Madras Civil Courts Act and in exercise of the powers conferred by section 28 of the Madras Civil Courts Act III of 1873 the High Court of Madras, has by notification in the State Gazette, Part II, dated 22nd June, 1955, at page 648, empowered all Subordinate Judges except those at Coimbatore, Ramanathapuram at Mathurai and Salem to have and exercise with effect from 19th May, 1955, the jurisdiction of a Judge of Court of Small Causes for the trial of suits cognisable by such Courts upto Rs. 2000. Originally the Small Cause jurisdiction was limited to Rs. 500 and it was increased to Rs. 1000 by Madras Act XVIII of 1926 and now to Rs. 2000 by Madras Act XVI of 1951.

The jurisdiction for the Court of Small Causes is derived from section 15 of the Provincial Small Cause Courts Act (Central Act IX of 1887). Section 15 (2) of the said Act fixes the upper limit of Small Cause jurisdiction at Rs. 500 and by sub-section (3) the State Governments are empowered to increase the jurisdiction upto Rs. 1000 and it was so increased by Act XVIII of 1926. It follows that State Governments have no right to further increase it beyond Rs. 1000.

Thus a conflict has arisen between the Central Act and State Act. Section 28 of Madras Civil Courts Act has been amended in 1951 but the amendment is beyond the powers conferred under section 15 (3) of the Provincial Small Cause Courts Act and seems to be *ultra vires*.

In the interests of the litigant public and to ensure fixity of jurisdiction and to prevent waste of time and money, this conflict and doubt deserve to be resolved as early as possible.

BOOK REVIEWS.

INDUSTRIAL LAW DIGEST (1953—1954) by *N. K. Khare and L. B. Bhide.* Published by Messrs. N. M. Tripathi, Ltd., Princess Street, Bombay. Price Rs. 15.

The Authors and Publishers should be congratulated on bringing out this volume in continuation of their first volume of the Industrial Law Digest which was reviewed in our columns. The volume covers the years 1953 and 1954. We had occasion to point out that a book of this nature has its value and utility especially in these days when Labour Laws are very much at work. The present volume follows the same pattern as the previous one for 1952—1953 and is divided into two parts. The first part contains a digest of the decisions of the Labour Appellate Tribunal of India. The digest of cases under this follows the subject heading. Part II contains a digest of the decisions of the various High Courts and the Supreme Court of India on the interpretation of the several provisions of the various statutes relating to Labour. The utility of this section would be very much enhanced, by giving reference to the regular law reports in which some of the cases are to be found.

HAND-BOOK OF HINDU LAW by *M. D. Manek* (Eighth edition). Published by Messrs. N. M. Tripathi, Ltd., Princess Street, Bombay. Price Rs. 8-12-0. (1955).

Though the book under review is mainly intended for the students of the Bombay University it is not without its use to the other University students and practitioners as well. It contains a short exposition of the Principles of Hindu Law based on the texts and decided cases. A special feature of interest to students is the indication of the Bombay University examination questions relating to several topical discussions. The Legislative changes effected by the Central Legislature in any particular branch of Hindu Law is indicated under the relevant discussion. So far as State legislations are concerned only the Bombay enactments are noted. Certain topics like Impartible Estates, Religious Endowments, etc., which field is being encroached upon by the Legislature, could have been given a wider treatment in the book.

The book contains eighteen chapters, each devoted to one topic like Adoption, Joint family, Marriage, etc. Each Chapter is well analysed and topical headings are provided. The exposition of the law and principles is simple and clear with citation of authority.

THE MADRAS CO-OPERATIVE SOCIETIES ACT (VI of 1932) with commentary by *S. Rajagopalan,* B.A., with a Foreword by J. C. Ryan, M.A., I.A.S., Registrar of Coperative Societies, Madras. Published by V. S. N. Chari and Company, Nungambakkam, Madras-6. Price Rs. 8. (1954).

This book will meet the demand in recent years for an up-to-date commentary on the Madras Co-operative Societies Act. Co-operative Societies have come into existence in many spheres nowadays. Its importance in the future social set-up cannot be ignored either. Hence a thorough understanding of the Act and the Rules is quite necessary for the department, administrators and the public who are or are likely to be members of Co-operative Societies. The book under review is written by a person of long experience in the department of co-operation and the benefit of that experience is shown in the explanatory notes on each section. The notes with case-law is quite clear and analytical. The book will be found useful by the Officers of the Co-operative department and by the legal profession. It will be found instructive even for the lay public, who have any connection with a co-operative society in any field of their activities.

THE MADRAS HINDU (BIGAMY PREVENTION AND DIVORCE) ACT (VI OF 1949) IN TAMIL by *M. S. Parthasarathy Iyengar,* B.A., B.L. Published by the Tamil All India Law Journal Office, Tiruvallur (1955). Price Re. 1.

This small booklet of about 45 pages purports to explain in the regional language the provisions of this rather important piece of social legislation which affects the Hindus in the State of Madras. The Act has now been at work for over 5 years

and quite a few cases have arisen under it. But still one cannot fail to notice that the enlightened public have not resorted to it for getting any remedy under it. Even among the larger section of the population it has not been quite popular. While the attention of the author to explain in Tamil the provisions of the Act is to be appreciated, its utility either for the lawyer or the layman is not adequate. It could have served its purpose better if it had been more exhaustive and critical. The translation of the sections, taken from the then Gazette edition, ought to have been suitably amended by substituting ' State ' for ' Provinces ' which were carried out by the subsequent Adaptation of Laws Orders.

LAW RELATING TO JOINT HINDU FAMILIES AND THEIR ASSESSMENT : By *Prem Nath Chadha*, B.A., LL.B., Published by Wadhwa & Company, Agra (1955). Price Rs. 10.

The title of the book suggests that it deals with that particular branch of Income-tax Act which relates to assessment of a Hindu joint family as an assessee. But a perusal of the book shows that the emphasis is really on the exposition of the law of joint family under Hindu Law. The first ten Chapters out of a total of twelve Chapters is taken up in the exposition of the Hindu Law relating to joint family. The other two Chapters is each devoted to assessment to income-tax and estate duty of a Hindu joint family respectively. The book could have a better justification and utility if greater importance is attached to the exposition of the law relating to the taxation of a joint family with a short note on the principles of the law on which it is based. Otherwise in its present form it has the unenviable lot of falling between the stools. Works like Mayne and Mulla on Hindu Law and standard commentaries on the Income-tax Act are familiar to the lawyer and layman. If the Author wants to justify his work as a special study of a particular technical branch of taxation, as it purports to be, the emphasis should really be on that. In Chapter XII is found a brief treatment of the recent Estate Duty Act in so far as they relate to Hindu joint family.

COMMENTARY ON THE EVIDENCE ACT (IN TWO VOLUMES) by *V.B. Raju*, M.A., I.C.S., District and Sessions Judge, Sholapur, Bombay, Vol. I (1955). Published by the Author. Price Rs. 32 per set.

The Indian Evidence Act is admittedly an important legislation which is of frequent reference by lawyers and Courts. A great volume of case-law has grown around it and almost every section of the Act has come in for interpretation before the various High Courts. Some of the more important sections have been considered by the Privy Council and the Supreme Court of India. The decisions of the English Courts and of the House of Lords have laid down the principles of the law in England on which the Indian Act is based. It is one of those very few enactments (the Indian Penal Code being another instance) that has stood in its original form without being subjected to frequent and piecemeal amendments.

Standard American and English works on the subject like Wigmore, Phillips, Taylor, Stephens, Phipson, to mention a few, have become established in the field and are still referred to in cases of doubts. Commentaries on the Indian Act have also been in the field and some of them have been of unexceptional value. Still the author feels that a clear and lucid commentary on the Indian Evidence Act is desirable. With that object he has placed the first volume of his commentaries.

About the quality of the work there can be no two opinions. It follows the traditional method of commentaries section-war, with topical headings. References to case-law, standard English books, etc., are quite adequate. But the mistakes uniformly committed throughout the book regarding the citation of the Law Reports and cases is rather irksome. One finds " Indian Cases " cited as 'i.e.', Bombay, Lahore (and all other series) being cited as ' bom.', ' lah.', ' punj.' in small letters instead of capitals. Again a reference like 1921 mad. 248 (Secretary), (1955) all. 59 (Rana), 1955 raj. 45 (Kisan), 1941 B. (Shri) is provokingly meaningless. Evidently they are intended to denote the names of parties! The author could have done well in printing the bare Act with a short summary of the principles of the law at the beginning of the book. With some attention devoted to the editing the book could have been made much better than what it is.